



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

**[EPA-R05-OAR-2016-0496; FRL-9992-43-Region 5]**

**Air Plan Disapproval; Wisconsin;**

**Redesignation Request for the Wisconsin portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin Area to Attainment of the 2008 Ozone Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is disapproving an August 15, 2016 request from Wisconsin to redesignate the Wisconsin portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin (IL-IN-WI) ozone nonattainment area (Chicago nonattainment area) to attainment of the 2008 ozone National Ambient Air Quality Standard (NAAQS or standard), because the area is violating the standard with 2015-2017 monitoring data. EPA is also disapproving Wisconsin's maintenance plan and Motor Vehicle Emissions Budgets (MVEBs), submitted with the State's redesignation request, since approval of these State Implementation Plan (SIP) components is contingent on attainment of the ozone standard. The Chicago area includes Cook, DuPage, Kane, Lake, McHenry and Will Counties, Aux Sable and Goose Lake Townships in Grundy County,

and Oswego Township in Kendall County in Illinois; Lake and Porter Counties in Indiana; and the area east of and including the corridor of Interstate 94 in Kenosha County, Wisconsin.

**DATES:** This final rule is effective **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2016-0496. All documents in the docket are listed in the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through <https://www.regulations.gov>, or please contact the person identified in the FOR FURTHER INFORMATION CONTACT section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Kathleen D'Agostino, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1767, [dagostino.kathleen@epa.gov](mailto:dagostino.kathleen@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

## **I. What is the background for this action?**

The background for this action is discussed in detail in EPA's February 15, 2019 proposed rule (84 FR 4426). In that proposed rulemaking, we noted that, under EPA regulations at 40 CFR 50, the 2008 ozone standard is violated when the three-year average of the annual fourth-highest daily maximum eight-hour ozone concentrations at any monitoring site in the subject area is greater than 0.075 parts per million parts of air (ppm). See 77 FR 30088 (May 21, 2012) for further information regarding area designations for the 2008 ozone standard and 77 FR 34221 (June 11, 2012) for information regarding the designation of the Chicago-Naperville, IL-IN-WI area for the 2008 ozone standard. See 40 CFR 50.15 and appendix P to 40 CFR part 50 regarding the ozone data requirements for a determination of whether an area has attained the 2008 ozone standard. Under section 107(d)(3)(E) of the Clean Air Act (CAA), EPA may redesignate a nonattainment area (or a portion thereof) to attainment if sufficient complete, quality-assured data are available to demonstrate that the nonattainment area as a whole has attained the standard and if all other requirements of section 107(d)(3)(E) have been met.

Wisconsin submitted a request for the redesignation of the Wisconsin portion of the Chicago nonattainment area to attainment of the 2008 ozone standard on August 15, 2016. The

redesignation request included summarized ozone data for all monitors in the Chicago-Naperville, IL-IN-WI ozone nonattainment area along with other information specific to Kenosha County to demonstrate that all requirements of section 107(d)(3)(E) of the CAA have been satisfied. The February 15, 2019 proposed disapproval provides a detailed discussion of the ozone data for the period of 2013 through 2017 (see table 1 in the February 15, 2019 proposed rule at 84 FR 4428), which show a violation of the 2008 ozone standard in the Chicago area based on current, quality-assured ozone data. The proposal also notes that preliminary monitoring data for 2018 indicate that the Chicago nonattainment area will continue to violate the standard when that data is considered. It does not, however, discuss in detail other components of Wisconsin's submittal because EPA believes that Wisconsin failed to meet the most basic requirement for redesignation, a demonstration that the Chicago ozone nonattainment area has attained the 2008 ozone standard. We proposed to disapprove Wisconsin's ozone redesignation request based on the violation of the 2008 ozone standard and proposed to disapprove Wisconsin's maintenance plan and MVEBs since approval of these SIP components is contingent on attainment of the ozone standard.

## **II. What comments did we receive on the proposed rule?**

EPA provided a 30-day review and comment period for the February 15, 2019, proposed rule. The comment period ended on March 18, 2019. We received one comment in support of EPA's proposed action. We received no adverse comments on the proposed rule.

### **III. What action is EPA taking?**

Based on the above and the information contained in EPA's proposed rule, EPA is disapproving Wisconsin's August 15, 2016 request to redesignate the Wisconsin portion of the Chicago nonattainment area to attainment of the 2008 ozone standard, because the Chicago nonattainment area continues to violate this standard based on the most recent three years of quality-assured, certified air quality monitoring data. Because this area continues to violate the 2008 ozone NAAQS, we are also disapproving the ozone maintenance plan and MVEBs included in the State's submittal.

### **IV. Statutory and Executive Order reviews.**

#### **Executive Orders 12866 and 13563: Regulatory Planning and Review**

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

## **Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs**

This action is an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

## **Paperwork Reduction Act**

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## **Regulatory Flexibility Act**

This action merely proposes to disapprove state law as not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

## **Unfunded Mandates Reform Act**

Because this rule proposes to disapprove pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

**Executive Order 13132: Federalism**

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to disapprove a state rule, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

**Executive Order 13175: Consultation and Coordination With Indian Tribal Governments**

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**Executive Order 13045: Protection of Children From Environmental Health and Safety Risks**

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and

Safety Risks" (62 FR 19885, April 23, 1997), because it proposes to disapprove a state rule.

**Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use**

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

**National Technology Transfer Advancement Act**

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

**Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations**

Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the CAA. Accordingly, this action merely disapproves certain state requirements for inclusion into the SIP under section 110 and subchapter I, part D of the CAA and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

## **Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action

may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations, Oxides  
of nitrogen, Ozone, Volatile organic compounds.

Dated: April 4, 2019.

Cheryl L. Newton  
Deputy Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. Section 52.2585 is amended by adding paragraph (gg) to read as follows:

**§ 52.2585 Control strategy: Ozone.**

\* \* \* \* \*

(gg) Disapproval—EPA is disapproving Wisconsin's August 15, 2016, ozone redesignation request for the Wisconsin portion of the Chicago-Naperville, IL-IN-WI nonattainment area for the 2008 ozone standard. EPA is also disapproving Wisconsin's maintenance plan and motor vehicle emission budgets submitted with the redesignation request.

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